

# Utah Law Enforcement Model Policy

## Domestic Violence - Ineligibility to Perform Duties & Carry Firearms

### I. PURPOSE

To establish the Agency policy regarding the investigation of domestic violence allegations against a an officer and regarding the ineligibility of an officer to exercise law enforcement authority and to carry a firearm after involvement in domestic violence.

### II. DEFINITIONS

A. “Misdemeanor crime of domestic violence,” means an offense that:

1. is a crime under federal or state law; and
2. has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.
3. This definition includes all crimes that involve the use or attempted use of physical force (example: simple assault or assault and battery) if the offense is committed by one of the defined parties. This is true whether or not state statute or local ordinance specifically defines the offense as a domestic violence offense.

B. “Domestic violence” includes an act or pattern of violence perpetrated by an officer upon his or her intimate partner or cohabitant, not done in defense of self or others, including but not limited to the following: bodily injury or threat of imminent bodily injury, sexual battery, physical restraint, property crime directed at the victim, stalking, violation of a court order of protection or similar injunction, death threats or death.

C. An officer shall not be considered to have been convicted of a domestic violence offense for the purposes of this policy if the conviction has been expunged or set aside, or is an offense for which the officer has been pardoned or has had civil rights restored, unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

- D. A “cohabitant” is defined under Utah law pursuant to Utah Code Ann. § 30-6-1(2), generally as a person who is or was married, related by blood or marriage, lives or lived with, child in common, or is the biological parent of the other’s unborn child. A “spouse or intimate partner” of an officer is defined by federal law, 18 United States Code § 2266(7), as: a spouse or former spouse; a person who shares a child in common; a person who cohabits or has cohabited as a spouse with the other person; or any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State or tribal jurisdiction.
- E. A “protective order” includes: civil cohabitant abuse protective orders issued under Title 30, Chapter 6 of the Utah Code; no contact orders or agreements issued under Title 77, Chapter 36 of the Utah Code; a foreign protective order recognized under Title 30, Chapter 6 of the Utah Code (issued from another state, territory or tribal jurisdiction); a child protective order issued under Title 78, Chapter 3h; a civil stalking injunction issued under Title 77, Chapter 3a of the Utah Code; a criminal stalking injunction issued under Section 77-5-106.5 of the Utah Code.

### III. POLICY

- A. Under federal law, 18 United States Code § 922(g)(9), it is unlawful for any person convicted of a “misdemeanor crime of domestic violence” to ship, transport, possess, or receive firearms or ammunition. Therefore, any officer who has been convicted of a “misdemeanor crime of domestic violence” is prohibited from possessing, transporting, or carrying firearms.
- B. Under 18 United States Code § 922(g)(8) any person who is subject to a court order restraining the person from harassing, stalking, or threatening an intimate partner or child of an intimate partner, may not possess, transport, or carry firearms. An officer that is subject to such a court order must immediately notify his or her supervisor of this fact so an internal investigation can be conducted and appropriate action taken.
- C. It is the policy of the Agency to adhere to a zero tolerance policy towards domestic violence by an officer. The Agency will not tolerate violations of this policy. Officers shall be expected to abide by the highest standards of conduct in their personal lives. Any officer determined through an administrative investigation to have committed domestic violence may be terminated from employment.

- D. It is the policy of the Agency to fully and fairly investigate all complaints of domestic violence reported to the Agency, including any complaint of domestic violence alleged to occur within the jurisdiction of the Agency and allegedly committed by a sworn law enforcement officer.

#### IV. PROCEDURE

- A. Any officer who has been investigated for, arrested for, charged with, or convicted of a “misdemeanor crime of domestic violence,” as defined in this policy, or any felony involving domestic violence, will immediately notify his or her supervisor of this fact.
- B. If an officer has been convicted of a felony or misdemeanor crime of domestic violence, he or she will immediately surrender all issued firearms to his or her supervisor or to the Agency Executive or the Agency Executive’s designee.
- C. If an officer has been arrested or charged with a felony or misdemeanor crime of domestic violence, but has not yet been convicted, the officer’s supervisor will monitor the prosecution and inform the Agency Executive of the case resolution.
- D. Any officer who is subject to a court order restraining the officer from harassing, stalking, or threatening an intimate partner or child of an intimate partner will immediately notify his or her supervisor of this fact and provide the Agency Executive with a complete and true copy of the court order. An exemption to the weapon surrender requirement may be granted in the discretion of the Agency Executive, if the officer demonstrates eligibility under the Official Use Exception to the Gun Control Act, 18 United States Code § 925(a)(1), as applied by the United States Bureau of Alcohol, Tobacco, and Firearms
- E. If an officer has obtained a court order of protection or similar order against an intimate partner or family member, the officer may inform his or her supervisor or the Agency Executive. The supervisor or the Agency Executive will then discuss the role that the Agency may take in providing for the officer’s security while on duty.
- F. Whenever a supervisor is notified that an officer is subject to a restraining or protective court order, the supervisor will forward this information and a copy of the court order to the Agency Executive. The Agency Executive shall assign an investigator to investigate the situation to determine if the officer has engaged in conduct that would make him or her ineligible to carry or possess a firearm under

federal law. The Agency Executive may enlist the services of an outside law enforcement agency to perform this investigation or may rely on other law enforcement agencies' reports of domestic violence complaints allegedly committed by the officer. At the conclusion of the investigation, appropriate action will be taken by the Agency Executive.

- G. Whenever an officer surrenders issued firearms to a supervisor or the Agency Executive in compliance with the provisions of this policy, the supervisor or the Agency Executive will inform the officer that federal law prohibits him or her from possessing, transporting, or carrying any firearm or ammunition. The officer should also be informed that continued possession of any firearms and ammunition is a violation of law, may subject the possessor to criminal penalties, and such firearms and ammunition are subject to seizure and forfeiture. The surrendered firearms will be placed in secure storage in the custody of the Agency Executive's Armorer and may be released only upon the order of the Agency Executive.
- H. Any officer who has reason to believe that any other officer of the Agency is committing domestic violence or abuse shall report the same to his or her supervisor or the Agency Executive. Failure to do so shall be grounds for discipline.
- I. Any officer who is under investigation for domestic violence or abuse, other than as a victim, by a law enforcement shall cooperate fully with that investigation, subject to constitutional and statutory privileges.
- J. An officer shall not interfere with any investigation of domestic violence, whether the officer or another officer or law enforcement officer is a suspect.
- K. An officer shall not stalk, intimidate, or harass an intimate partner, family member, or other person who makes a complaint of domestic violence. An officer shall not falsely report domestic violence.
- L. All supervisors shall be alert to and document any pattern of abusive behavior potentially indicative of domestic violence, including but not limited to, the following: undue aggressiveness, increased use of force, signs of stalking and inappropriate surveillance, citizen and fellow officer complaints of aggressive behavior and/or language, excessive tardiness and/or absences, verbal disparagement of intimate partner and/or family members, alcohol and/or substance abuse, reports of potential abuse or abusive behaviors from co-workers,

and monitoring or controlling the intimate partner and/or family members through excessive or abusive phone contacts.

- M. Supervisors who observe signs of domestic violence shall report the same to the Agency Executive. Appropriate action will follow, which may include: counseling with the officer, referral to the employee assistance program, referral to social services providers, and requirement of a fitness for duty evaluation.
- N. When responding to a domestic violence complaint involving an officer or any law enforcement officer from another jurisdiction, all responding officers, investigators, and supervisors shall observe the following procedures, in addition to procedures mandated by state law and sound law enforcement practice.
  - 1. Upon arrival on the scene of a domestic violence call or incident involving a law enforcement officer, the primary responding officer shall immediately notify dispatch and request a supervisor of higher rank than the involved officer or law enforcement officer report to the scene, regardless of the involved officer's jurisdiction.
  - 2. The responding officers shall obtain needed medical assistance, protect the immediate safety of all parties involved, secure the scene and preserve evidence, note all excited utterances, admissions and/or incriminating statements, and, make an arrest if required by state law and supported by probable cause to arrest.
  - 3. Photographic and/or video documentation of the parties involved and scene shall be recorded where such resources are available. As appropriate and necessary, the children should be interviewed separately from other parties.
  - 4. Whenever an officer or other law enforcement officer is arrested, the supervisor shall relieve the accused officer of all service weapons regardless of whether the officer is a member of the Agency. The supervisor shall inquire whether the victim wants any firearms removed from the home for safekeeping by the Agency and make arrangements as necessary.
  - 5. The responding supervisor shall notify the Agency Executive as soon as possible. If the officer is from another jurisdiction, the supervisor shall ensure that the accused officer's agency chief executive is promptly

notified.

6. If the investigation reveals probable cause to believe that an act of domestic violence has in fact occurred and that the involved officer or other law enforcement officer is the primary aggressor, the investigating officers will arrest the offending officer or officer for the appropriate charge. The responding supervisor shall notify the Agency Executive of the arrest as soon as possible. The responding supervisor shall take all reasonable steps to provide for the security of the arrested officer or officer, including, but not limited to, allowing him or her to change out of any law enforcement clothing.